

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Joseph Majewicz,

Plaintiff,

v.

Wells Fargo Auto Finance; and DOES 1-10,
inclusive,

Defendants.

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: Civil Action No.: _____
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COMPLAINT

For this Complaint, the Plaintiff, Joseph Majewicz, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of the Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Joseph Majewicz ("Plaintiff"), is an adult individual residing in Rochester, New York, and is a "person" as defined by 47 U.S.C. § 153(39).

4. The Defendant, Wells Fargo Auto Finance ("Wells Fargo"), is a business entity located in Murietta, California, and is a "person" as defined by 47 U.S.C. § 153(39).

5. Does 1-10 (the "Agents") are individual agents employed by Wells Fargo and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as parties once their identities are disclosed through discovery.

6. Wells Fargo at all times acted by and through one or more of the Agents.

ALLEGATIONS APPLICABLE TO ALL COUNTS

7. In or around January 2016, Wells Fargo began placing calls to Plaintiff's cellular telephone, number 585-XXX-5973.

8. Plaintiff did not provide Wells Fargo with his phone number and does not know how it obtained it.

9. Wells Fargo called Plaintiff from telephone number 800-289-8004, using an automatic telephone dialing system ("ATDS") and an artificial or prerecorded voice.

10. When Plaintiff answered calls from Wells Fargo he heard a prerecorded message that requested that Plaintiff return the call to Wells Fargo.

11. On or about January 29, 2016, Plaintiff called Wells Fargo and spoke with Chris, an Agent. Plaintiff explained to Chris that he has never had an account with Wells Fargo and further requested that Wells Fargo stop calling.

12. In response, Chris told Plaintiff that he would have Plaintiff's cellular telephone number removed from their system.

13. Nevertheless, Wells Fargo continued to place ATDS and prerecorded calls to Plaintiff's cellular telephone.

14. Plaintiff was frustrated and inconvenienced by Wells Fargo's continued calls.

COUNT I
VIOLATIONS OF THE TCPA –
47 U.S.C. § 227, et seq.

15. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

16. At all times mentioned herein and within the last four years, Defendants called Plaintiff on his cellular telephone using an automatic telephone dialing system ("ATDS") and a

prerecorded or artificial voice.

17. Plaintiff never provided his cellular telephone number to Defendants and never provided his consent to receive ATDS calls from Defendants.

18. Despite being directed to cease all calls, Defendants continued to place automatic telephone calls to Plaintiff's cellular telephone. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

19. The telephone number called by Defendants was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

20. The calls from Defendants to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

21. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

22. Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each call made in knowing and/or willful violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: July 12, 2016

Respectfully submitted,

By /s/ Sergei Lemberg

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